

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3984 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SHRI JAGDISH P. SHETH

Versus

DY COLLECTOR ULC RAJKOT & ANOTHER

Appearance:

Shri S.M.Shah, Advocate, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader,
for the Respondents.

CORAM: MR.JUSTICE A.N.DIVECHA

Date of decision: 12/08/96

ORAL JUDGMENT

The order passed by the Competent Authority at

Rajkot (respondent No.1 herein) on 27th January 1987 under section 8 (4) of the urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 17th November 1990 in Appeal No.Rajkot-67 of 1987 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 3781 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Rajkot. That form was duly processed by respondent No.1. After observing necessary formalities under section 8 of the Act, by his order passed under sub-section (4) thereof on 27th January 1987, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 3781 square metres. Its copy is at Annexure-C to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-67 of 1987. By the order passed on 17th November 1990 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-D to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-C to this petition as affirmed in appeal by the appellate order at Annexure-D to this petition.

3. The grievance voiced by learned Advocate Shri Shah for the petitioner is that the petitioner had shown the land in question to be of co-ownership of in all six persons as transpiring from the agreement entered into amongst them on 23rd October 1970. Its copy is at Annexure-A to this petition. This document has been referred to in the appellate order at Annexure-D to this petition. It thus transpires therefrom that the land in question was purchased in co-ownership by some six persons and each one's share has been specified therein though it was agreed that it was to be purchased in the sole name of the petitioner herein. This document at Annexure-A to this petition has not been relied on by respondent No.2 in the appellate order at Annexure-D to this petition on the ground that the land was purchased in the name of the petitioner only on the ground that he was the only agriculturist among the six co-owners and

the land could not have been purchased in the name of any non-agriculturist.

4. The document of sale is at Annexure-B to this petition. The land is referred to therein as waste land. Whether a piece of waste land can be said to be a piece of agricultural land or not is a moot question. The authorities below do not seem to have applied their mind to this aspect of the case.

5. If it was a piece of agricultural land, learned Advocate Shri Shah for the petitioner has submitted that the benefit of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465 ought to have been given. As against this, learned Assistant Government Pleader Shri Uraizee for the respondents has submitted that it has been held in the impugned orders that the land remained uncultivated on the basis of Village form No.7/12. It may however be noted that the order for which Village Form No.7/12 was referred to has not been mentioned in the impugned orders as rightly submitted by learned Advocate Shri Shah for the petitioner. What has to be seen is whether or not the land in question was cultivated on the date of coming into force of the Act for the purpose of applicability of the aforesaid binding ruling of the Supreme Court. Attention of the authorities below could not be focused on this aspect of the matter as the benefit of the study of the aforesaid binding ruling of the Supreme Court was not available to the authorities below. It may be clarified that, if the land was found to be non-agricultural, the effect of the document at Annexure-A to this petition will have to be considered by the authorities below. If the land is found to be agricultural, the effect of the aforesaid binding ruling of the Supreme Court will have to be considered in the context of whether or not the land was subject to actual agricultural operations on the date of coming into force of the Act. If the land is found to be agricultural and it is found that agricultural operations were not carried on therein on the date of coming into force of the Act, an inquiry would be required to be made whether or not any prohibition against transfer of a piece of agricultural land in favour of a non-agriculturist was in existence at the relevant time. If it was so, a question will have to be examined whether or not the agreement at Annexure-A to this petition can be said to be in contravention of the public policy for the purpose of section 23 of the Indian Contract Act, 1872.

6. In order to examine all these questions, the matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law. The impugned orders at Annexures-C and D to this petition will have therefore to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 27th January 1987 at Annexure-C to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 17th November 1990 in Appeal No.Rajkot-67 of 1987 at Annexure-D to this petition is quashed and set aside. All consequential actions and/or orders, if any, pursuant to the impugned orders at Annexures-C and D to this petition are also quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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